

INTERNAL REVENUE SERVICE  
District Director

Department of the Treasury

c/o McCaslin Industrial Park  
2 Cupania Circle  
Monterey Park, CA 91755-7406

Date: JUN 06 1994

Employer Identification Number:  
[REDACTED]

Case Number:  
[REDACTED]

Person to Contact:  
[REDACTED]

Telephone Number:  
[REDACTED]

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

FACTS

The information submitted discloses that you were incorporated under the Nonprofit Public Benefit Corporation Law of the State of [REDACTED] on [REDACTED]. Article IV of your articles of incorporation states that you are "organized exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code."

The purpose of your organization, as stated in your application Form 1023, is to conduct a fundraising program aimed at the general public and alumni of "[REDACTED]". The monies raised will be used to fund partial scholarships to enable economically needy individuals to attend and participate in the [REDACTED] Program.

The [REDACTED] Programs are offered at the [REDACTED], a for-profit organization located in [REDACTED]. According to its brochure, [REDACTED], also a for-profit entity located in [REDACTED], in [REDACTED]. It is described as an eight-day program in which participants "learn and practice the skills you need for a fulfilling life."

Recipients of your organization's funds must be registered for a program at the [REDACTED] and must complete an application form demonstrating a sincere interest in the [REDACTED] Program and financial need as well as a commitment to volunteer eight (8) hours on behalf of your organization.

Fundraisers have consisted of a dinner, car wash, and auction.

[REDACTED]

You plan future car washes, dinners and " [REDACTED] Fundraisers." You also publish a newsletter that lists upcoming [REDACTED] Programs scheduled at the [REDACTED] Center.

In [REDACTED], \$ [REDACTED] of your total expenditures of \$ [REDACTED], or [REDACTED] percent of your funds were distributed to students to attend the [REDACTED] Programs at the [REDACTED] Center. In [REDACTED] and [REDACTED], it is anticipated that [REDACTED] percent of your total expenditures will be distributed to individuals for this purpose.

#### ISSUE

Does the organization qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code?

#### LAW

Section 501(c)(3) of the Internal Revenue Code describes certain organizations exempt from income tax under section 501(a) and reads in part as follows:

"(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in this section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

[REDACTED]

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly, by such private interests.

In Revenue Ruling 76-206, 1976-1 C.B. 154, an organization formed to generate community interest in the retention of a classical music program by a local for-profit radio station by seeking program sponsors, encouraging continuation of contracts by existing sponsors, urging the public to patronize the sponsor, soliciting subscription to the station's program guide, and distributing material promoting the classical music program, all of which tried to increase the station's revenue, does not qualify for exemption under section 501(c)(3) of the Code.

#### ANAYISIS AND CONCLUSION

Your organization was formed to provide funds to individuals to enable them to participate in the [REDACTED] at the [REDACTED], a for-profit entity. Although you are not controlled by [REDACTED] Center, the benefit flowing to this for-profit corporation is substantial. By providing these funds only to customers of [REDACTED], you are providing more clientele and thus sales revenue for this for-profit corporation, similar to the organization described in Revenue Ruling 76-206 as cited above. Much as your funds are provided to "needy" individuals, these individuals, were it not for the funds from your organization, may not have been able to participate in the program. Your funding permits them to become customers of the for-profit company and thus, your funds directly benefit the company.

As you are not primarily engaged in an activity specified in section 501(c)(3) of the Code, you fail to meet the operational test. That is, you are not operated exclusively for one or more exempt purposes as required by Regulations section 1.501(c)(3)-1(c) but, are operating for the private benefit of a for-profit company, [REDACTED]. Therefore, we conclude that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

Accordingly, you are required to file income tax returns, form 1120, U.S. Corporate Income Tax Return, annually with your respective Service Center.

Donations to you are not deductible by donors under section 170 of the Code.

[REDACTED]

If you are in agreement with this proposed determination, we request that you sign and return the enclosed agreement, Form 6018, Consent to Proposed Adverse Action. Please note the instructions for signing on the reverse side of the form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange for a hearing. The hearing may be held at the office of Regional Director of Appeals, or if you request, at a mutually convenient District Office. A self-addressed envelope is enclosed.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If you have any questions, please contact the person whose name and number appear on the heading of this letter.

Sincerely yours,

  
Richard R. Orosco  
District Director

Enclosure:  
Publication 892  
Form 6018

Form **6018**  
(Rev. August 1983)

Department of the Treasury Internal Revenue Service  
**Consent to Proposed Adverse Action**  
(All references are to the Internal Revenue Code)

Prepare In  
Duplicate

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

JUN 06 1994

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

**NATURE OF ADVERSE ACTION**

- ☒ Denial of exemption as an organization described in section 501(c)(3) of the Internal Revenue Code.
- ☐ Revocation of exemption, effective
- ☐ Modification of exempt status from section 501(c)( ) to 501(c)( ), effective
- ☐ Classification as a private foundation (section 509(a)), effective
- ☐ Classification as a non-operating foundation (section 4942(j)(3)), effective
- ☐ Classification as an organization described in section 509(a)( ), effective
- ☐ Classification as an organization described in section 170(b)(1)(A)( ), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions are on the back of this form.)

Name of Organization

Signature and Title

Date

Date

Form 6018 (Rev. 8-83)